

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant/owner:** Layne Floyd  
PO Box 65, Amherst, MA 01002

**Date application filed with the Town Clerk:** July 21, 2010

**Nature of request:** To modify Special Permit, ZBA FY2004-00022, to add one (1) additional bedroom in each unit of an existing two-family dwelling and to remove a requirement for an on-site manager, under Section 10.33 of the Zoning Bylaw.

**Address:** 192/194 Belchertown Road (Map 15C, Parcel 64, R-N Zoning District)

**Legal notice:** Published on August 18, 2010 and August 25, 2010 in the Daily Hampshire Gazette and sent to abutters on August 18, 2010

**Board members:** Hilda Greenbaum, Tom Ehrgood, Mark Parent

**Submissions:**

- ZBA application, filed with the Town Clerk on July 23, 2010;
- Applicant letter, dated August 26, 2010;
- Site Plan, prepared by the applicant, dated July 12, 2010;
- Existing & proposed floor plans and elevations, prepared by the applicant, dated July 12, 2010;
- Management Plan;
- Residential Lease;
- Applicant letter, dated July 12, 2010, requesting a waiver from application requirement;
- Town GIS map showing property;
- Special Permit ZBA FY2004-00022, with approved plans;
- Special Permit ZBA FY2003-00009;
- Letter from application containing project summary and Section 10.38 findings, dated August 26, 2010.

**Site Visit:** September 1, 2010

The Board members and Town Staff met the applicant, Layne Floyd, and attorney, Alan Seewald, on site. The Board members observed the following:

- The location of the property on the north/east side of Belchertown Road bordered to the north by a mature stand of evergreen trees; to the south by a two-family dwelling currently owned by the applicant; and to the south/west by a commercial nursery use on the opposite side of Belchertown Road;
- The existing two-story raised ranch situated approximately 80 feet from the edge of Belchertown Road with an existing gravel parking area along the north;
- The exterior perimeter of the building including the existing privet hedge adjacent to Belchertown Road, minimal landscaping along the foundation and rear decking;

- The interior of the building including the first/ground floor unit and the second floor unit. Both units were empty and in the process of being cleaned and undergoing minor renovations.

**Public Hearing:** September 2, 2010

Mr. Floyd was accompanied by attorney Alan Seewald. Ms. Greenbaum made a disclosure that she had worked with Mr. Seewald in the past, but that this relationship would not unduly influence her ability to render an impartial decision.

Mr. Seewald stated the following:

- The site is located on Belchertown Road, also known as Route 9, a major east/west artery through the Town and is in the Neighborhood Residence Zoning District, where a two-family dwelling is allowed by Special Permit;
- The property is triangular in shape and is surrounded on the north by a large farm field with no residential uses; on the north side it is bounded by a single family residential rental property screened by an area of mature vegetation; bordered to the southeast by a two-family dwelling owned by the applicant; and to the southwest, across Belchertown Road, is a commercial garden nursery;
- The applicant is requesting two major modifications to the existing Special Permit: 1) increase the number of bedrooms from three (3) to four (4) bedrooms in each unit; and 2) eliminate the requirement for an on-site manager;
- The proposal consists of a new two-story addition on the north side of the building which will add a new bedroom and closet on each floor of the building.

Mr. Floyd stated the following:

- He originally moved to Amherst in 1975 to study at UMass Amherst, and he began a rental property management company in 1989, at one point owning 20 properties;
- His business philosophy is to keep the rent price a little lower and keep the property better maintained than others in order to increase the number and quality of potential student tenants.

Mr. Seewald stated the following:

- The siding on the new addition will match that of the existing building.
- The structure with the additions would meet all of the dimensional requirements of the Zoning Bylaw and satisfies the criteria of Section 10.38;
- The two-family dwelling is somewhat isolated, but it is also situated on a main artery through town;
- The University no longer requires sophomores to live on campus, so there are increased numbers of students seeking off-campus housing;
- The proposal fills out the existing residential density on the site and does not require new development elsewhere;
- There have been no significant problems with the units on the property, which reflects Mr. Floyd's ability to be a good and attentive landlord.

Mr. Seewald spoke specifically about the removal of the requirement for an on-site manager. He stated the following:

- Mr. Floyd has in the past appointed one of the tenants to be an on-site manager. This arrangement puts peers in the role of supervising peers, which is not a good idea and gives a false sense of security;
- Mr. Floyd is fully capable of managing the property. For example, he has included provisions, such as prohibiting more than 12 people gatherings, kegs and parking on the grass, in the rental lease;
- If there are problems on the property, Mr. Floyd will find out about it and that provisions of the lease allow him to take action.

Mr. Parent noted that in 2004 a Special Permit was granted with a number of conditions, including a requirement for a landscape plan. That plan was submitted and approved by the Board on September 23, 2004. Mr. Floyd stated that the approved planting plan was implemented, including the privet hedge adjacent to the road, but that some of the vegetation near the house had died and not been replaced. He requested that if new vegetation is required, that it be low growing vegetation in order not to block the lower level windows along the front of the building.

Mr. Floyd stated that new utilities would be installed along the west side of the house and would be protected from vehicles by concrete posts.

Ms. Greenbaum asked about the lattice area required in Condition # 3 of the Special Permit from 2004. Mr. Floyd stated that the deck railing has screening installed to block the tenant view of the adjacent patio area.

Ms. Greenbaum referred to the Master Plan and asked about proximity of the property to a bus stop. Mr. Floyd stated that he was not sure about the location of the nearest bus stop but that sidewalks along Belchertown Road lead to bus stops at both Echo Hill and Cumberland Farms.

Ms. Greenbaum referred to Section 10.384 of the Zoning Bylaw and asked why there are no windows proposed on the proposed west façade. Mr. Floyd stated that the number of windows proposed meets the requirements of the building code and that the windows do not necessarily correspond with efficiency.

Mr. Ehrgood asked whether there was any documentation to support that there have been no significant issues on the property. Mr. Floyd stated he was made aware of one police call by receiving notification in the mail detailing the event. Mr. Seewald stated that in the event of a complaint, the units are listed on the Town's Rental Registration list.

Mr. Ehrgood MOVED to close the evidentiary portion of the public hearing. Mr. Parent seconded the motion and the Board VOTED unanimously to close the public hearing.

**Public Meeting:**

The Board determined that the plans submitted and prepared by the applicant were acceptable. Ms. Greenbaum moved to WAIVE the requirement for professional prepared Building and Site plans. Mr. Parent seconded and the Board VOTED unanimously.

Mr. Parent and Ms. Greenbaum identified the importance of landscaping on properties containing non-owner occupied two-family dwellings in helping to maintain enhance the visual compatibility with other single family dwellings. Mr. Ehrgood expressed hesitancy in the Board's general regulation of certain aesthetic issues and that they must be reviewed on a case-by-case basis.

**Specific Findings:**

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381- The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority and is compatible with existing uses and other permitted uses in the same zoning district. There are other rental properties in the immediate neighborhood. The creation of two (2), four (4) bedroom units is in keeping with the residential nature of the neighborhood; is compatible with the existing multifamily uses in the vicinity; and, conforms to the dimensional requirements of the Zoning Bylaw.

10.382 - The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features. The surrounding properties are either rental units or agricultural land, which would not be adversely affected by the proposed addition of two bedrooms. The parking area to the north of the existing structure, which would be expanded, is adequately screened from the rental house to the west so that there would be no increase in light or noise affecting that property. The exterior siding of the structure will match that of the existing building.

10.383 & 10.387- The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and provides convenient and safe pedestrian and vehicle movement. The addition of two (2) additional bedrooms will not be a substantial inconvenience or hazard because the proposal provides adequate parking and turn around areas on site.

10.384 -Adequate and appropriate facilities would be provided for the proper operation of the proposed use. As identified in the Management Plan, appropriate facilities are provided for parking, trash storage and removal, and snow plowing.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw. The proposal provides eight (8) parking spaces which is double the minimum requirement of two (2) spaces per unit under Section 7.000. No parking is proposed within the front yard setback or on the grass area adjacent to the parking area.

10.389 - The proposal provides adequate methods of disposal and/or storage for sewage, refuse, and recyclables. The property is served by town sewer and water. The trash and recycling will be stored behind the addition and will be screened from Belchertown Road and will be picked up weekly.

10.392 - The proposal provides adequate landscaping, including the screening of adjacent residential uses. The parking area is adequately screened from the property to the north and the farmland to the east. The existing privet hedge provides adequate screening from Belchertown Road. Additional landscaping is required to be installed adjacent to the dwelling to ensure compatibility of the use within the neighborhood and to help replicate an owner occupied residence.

10.393 - The proposal provides protection of adjacent properties by minimizing the intrusion of lighting. Any new exterior lighting will be downcast or shielded to prevent light trespass onto adjacent properties.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw and the goals of the Master Plan. The proposal adds two (2) additional bedrooms to an existing two-family dwelling in accordance with the maximum number of bedrooms allowed by the Zoning Bylaw. The proposal provides parking in excess of what is required by the Zoning Bylaw. The proposal is in harmony with the goal of the master plan to “preserve and expand the number of affordable and moderately priced rental and ownership units in the housing stock”. The proposal adds and promotes housing to an existing structure located on a public transportation route to the University.

**Public Meeting – Zoning Board Decision**

Ms. Greenbaum moved to APPROVE the application with conditions. Mr. Parent seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to modify Special Permit, ZBA FY2004-00022, to add one (1) additional bedroom in each unit of an existing two-family dwelling and to remove the requirement for an onsite manager, under Section 3.321 and 10.33 of the Zoning Bylaw, at 192/194 Belchertown Road (Map 15C, Parcel 64), with conditions.

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HILDA GREENBAUM

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TOM EHRCOOD

\_\_\_\_\_  
MARK PARENT

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2010.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
in the Hampshire County Registry of Deeds.

**Town of Amherst  
Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2011-00003, to modify Special Permit ZBA FY2004-00022, to add one (1) additional bedroom in each unit of an existing two-family dwelling and to remove the requirement for an onsite manager, under Section 3.321 and 10.33 of the Zoning Bylaw, at 192/194 Belchertown Road (Map 15C, Parcel 64), with the following conditions:

1. This permit shall supersede other Special Permits on this property.
2. The addition and interior layout shall be built and used in accordance with the floor plans and elevations prepared by the applicant, dated July 12, 2010, and stamped approved by the Zoning Board of Appeals on September 2, 2010.
3. The new siding on the addition shall match that of the existing buildings.
4. The parking area and improvements shall be constructed and maintained in accordance with the site plan, dated July 12, 2010, and stamped approved by the Zoning Board of Appeals on September 2, 2010.
5. The property and use shall be managed in accordance with the Management Plan, received on August 26, 2010 and stamped approved on September 2, 2010.
6. Prior to a Certificate of Occupancy, a revised landscape & lighting plan showing the location and species of additional plantings adjacent to the two-family dwelling; location of existing and new sidewalks and location of exterior lighting fixtures shall be submitted for review and approval at a public meeting.
7. All landscaping shall be maintained in good condition and in a manner consistent with an owner occupied dwelling.
8. All existing and new sidewalks shall be built and maintained in a manner which is clearly accessible to all tenants.
9. All exterior lighting fixtures shall be downcast, shielded, or situated so as to prevent light spillage onto adjacent properties. The lighting fixtures shall either be set on motion detectors, or placed appropriately to sufficiently light the walkways and parking area.
10. Each dwelling unit shall be registered with the Board of Health in accordance with the Rental Registration requirements.
11. The name and telephone number of the property owner shall be recorded with the Health Department, Inspection Services and Fire Department.
12. This permit shall expire upon change of ownership.

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Hilda Greenbaum, Acting Chair  
Amherst Zoning Board of Appeals

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DATE